IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.697 OF 2007
IN
NOTICE OF MOTION NO. OF 2007
IN
S.C. SUIT NO.3189 OF 2007

Mr. Vinod s/o. Late Ishwardas Chhabra .. Appellant/
Orig.Plaintiff

Versus

1. The India Motion Picture Producers Association
2. Mr. T.P. Aggarwal
3. Mr. Vinay Kumar Sinha
4. Mr. Manoj Chaturvedi
5. Mr. Surjit Aujla
6. Mr. Kukoo Kohli
7. Mr. Naresh Mohnot
8. Mrs. Farah Sultan Ahmed
9. Mr. S.Kumar Mohan
10. Mr. Guddu Dhanoa
11. Mr. Ashok Pandit
12. Mr. Rakesh Kumar Sharma
13. Miss Sushama Shiromanee
14. Shri Pawan Kumar
15. Mrs. Shabnam Kapoor
16. Mr. K.C. Bokadia
17. Mrs. J. Neelam
18. Mr. Anand Girdhar
19. Mr. Vicky Ranawat
20. Mr. N.R. Pachisia
21. Mr. Deepak Tijori
22. Mr. Shabeer Boxwala
23. Mr. Nitin P. Mavani
24. Mr. Johny Bakshi ..Respondents/
Orig.Defendants

Mr.A.M. Sarogi, for the appellant
Mr.Vaibhav Krishna i/b. Juris Coasille's for the Respondent Nos.1 and 2
Mr. L.H. Patil for the Respondent Nos.3 to 14.

CORAM : S.R. SATHE, J.
DATED : 17/09/2007

P.C.:-

1. Heard both the learned Advocates at length.

2. Appeal from order is heard finally at admission stage.

3. Appellant-original Plaintiff in S.C. Suit No.3189 of 2007 has preferred this appeal against the order passed by the Judge, City Civil Court, Mumbai in Notice of Motion whereby Plaintiff's prayer for ad-interim injunction restraining defendants from implementing the amendment to the Memorandum and Articles of Association alleged to have been made in extraordinary committee meeting dated 25/01/2007 and holding any General Body Meeting without declaring the elections of the Defendant No.1 was rejected. For the sake of convenience hereafter the parties shall be referred to as 'Plaintiff' and 'defendants'.

4. The brief facts giving rise to this appeal are as under :-

The defendant No.1 is an Association registered under the provisions of Companies Act. The Plaintiff and defendant Nos.2 to 24 are elected members of the defendant No.1 Association. The said members are elected for a period of 1 year in the election held on 27/09/2006. The Managing Committee of the defendant No.1 called a meeting on 25/01/2007 and claimed that the Memorandum and Articles of Association of defendant No.1 have been amended and as per the amendment in Clause-30(a) of Articles of Association it is decided that the election in respect of the defendant No.1 shall be held after every 2 years. The defendant No.1 declared date of Annual General Meeting as 03/09/2007, however, there was no agenda regarding election to be held in the said meeting. According to Plaintiff, no valid amendment had taken place as alleged by the defendant No.1 Association and hence, he filed suit for declaration that defendant No.1 Association is bound to call Extraordinary General Body Meeting as per the requisition made by the members and till that time the association has no right to call Annual General Meeting and the Association has also no right to give effect to the amendment in Clause-30(a) of the Articles of

Association. The Plaintiff also prayed for permanent injunction restraining defendants from implementing the amendment.

5. The Plaintiff also filed Notice of Motion and prayed for temporary injunction restraining defendants from implementing the amendment to the Memorandum and Articles of Association and holding any General Body Meeting without declaring the election of the defendant No.1 and preventing any person to contest the election by keeping the age bar of 75 years.

6. The defendant No.1 Association filed its say. General Secretary Anil Nagrath filed his affidavit in reply and contended that the defendant No.1 Association has in fact passed an unanimous resolution in the meeting held on 25/01/2007 regarding amendment of Clause-30(a) of the Articles of Association of defendant No.1 and Plaintiff is not entitled to challenge the said resolution. He also contended that Plaintiff has in fact no cause of action to file the present suit. The defendant No.1 is acting as per the Articles of Association and the Provisions under the

Companies Act. So, Plaintiff is not entitled to file the present suit. He also contended that there is nothing on record to show that the defendants have committed breach in respect of any valuable legal right of the Plaintiff. He also contended that Plaintiff has not made out any prima facie case and as such application be rejected.

7. After hearing arguments of both the learned Advocates, learned Judge, City Civil Court, Mumbai came to the conclusion that no ad-interim relief can be granted at the said stage, as Plaintiff has failed to make out any prima facie case.

8. Being aggrieved by the above mentioned order Plaintiff has filed the present appeal. In this appeal before me, Shri A.M. Sarogi, learned Advocate for the Appellant-Plaintiff has urged two points. Firstly, he submitted that there is nothing to show that valid amendment in Clause-30(a) has been made by the defendant No.1 Association. According to him, when several members had given requisition to call Extraordinary General Meeting, the defendant No.1

Association was bound to call the said meeting and as they have failed to do so, it is necessary to direct the defendant No.1 to call such meeting and restrain the defendant No.1 from holding AGM without declaring elections. Learned Advocate also submitted that the alleged amendment in respect of the tenure of the elected body can not be made applicable retrospectively. He, therefore, submitted that ad-interim relief as prayed ought to have been granted by the learned Judge, City Civil Court, Mumbai. He, therefore, submitted that appeal be allowed and relief claimed by the Plaintiff be granted. As against this, learned Advocate for the defendant No.1 submitted that unanimous resolution has been passed to amend clause-30 (a) of the Articles of Association and the said clause is applicable to the existing body. He also submitted that Civil Court has in fact no jurisdiction to try the present suit. According to him, the Plaintiff has failed to make out a case that the defendant Association has committed any breach of the Statutory Provisions and as such the Plaintiff's prayer has been rightly rejected.

9. From the perusal of the Notice of Motion, it is very clear that by virtue of the said motion Plaintiff had prayed that the defendants be restrained from implementing the amended Memorandum and Articles of Association and they be restrained from holding Annual General Body Meeting without declaring elections. In the Plaint, it has been stated that Annual General Meeting has been called by the defendant No.1 on 03/09/2007. The said date has expired. So, now the present Appeal from Order has in fact become infructuous and as such the same can be dismissed on that count alone.

10. The Plaintiff has nowhere stated that any other Annual General Meeting is called by the defendant No.1. So, no blanket ad-interim injunction as prayed by the Plaintiff can be granted.

11. From the perusal of the record and affidavit filed by the General Secretary of the defendant No.1 it is very clear that on 17/01/2003 Executive Committee decided to make alteration in the Articles of Association of the defendant No.1 and it was also made

clear that the proposed alteration is subject to approval of Regional Director, Western Region, Department of Company Affairs, Mumbai. It is also very clear that on 25/01/2007 Extraordinary General Meeting of defendant No.1 took place and following resolution was passed unanimously.

> **" RESOLVED THAT Article 30(a) be and is hereby changed to "Hence forth (now onwards) the tenure of Executive Committee shall be two years from the date of appointment and entire committee shall retire at Annual General Meeting of alternate year but shall continue in office until its successor is elected ".**

12. From the affidavit of General Secretary it is also very clear that defendant No.1 has requested vide their letter dated 07/07/2007 to Registrar of Company to accept the amendment approved in the meeting dated 25/01/2007.

13. So, it does appear that the defendant No.1 is

in fact acting in accordance with the Articles of Association, resolutions passed from time to time and the provisions of the Companies Act. Ofcourse, in the affidavit, General Secretary has not specifically mentioned as to what reply is received from the Registrar of the Company. Whether the Registrar of Company and Regional Director for western region have approved the amendment in question. So, at this stage, Plaintiff has in fact failed to prove that defendant No.1 is acting contrary to the provisions of law and the Articles of Association or that his valuable legal rights has been infringed or is likely to be infringed by the defendant No.1. As above mentioned resolution with regard to amendment of Clause-30(a) is passed unanimously, now Plaintiff who was also party to the resolution can not challenge the same.

14. Shri Sarogi, learned Advocate for the Appellant submitted that the defendant No.1 has failed to call Extraordinary General Meeting though, several members had given requisition for the same. However, it is very clear that for calling such Extraordinary General Meeting the requisition must be from 10% members. In

the instant case, admittedly, 10% members had not asked for such meeting. So, the defendant No.1 was not under an obligation to call Extraordinary General Meeting. Besides this, there is another provision in the Articles of Association which says that if the meeting is not called as per the requisition given by the members, then, requisitioniest may call such meeting 21 days after the date of requisition. Clause-57 of Articles of Association is to this effect. However, there is nothing on record to show that in the instant case above provision is resorted to. From all this, it is very clear that Plaintiff's suit is in fact misconceived. Plaintiff has failed to make out any prima facie case. Balance of convenience is also not in favour of Plaintiff. So, under such circumstances, if interim relief as claimed by the Plaintiff is granted then it would put restriction on the defendant No.1 Association to carry out their usual activities by following due Procedure under the Act and as per the Articles of Association.

15. Much is made about the fact as to whether the amendment to clause-30(a) of the Articles of

Association is retrospective or prospective. In my opinion, at this stage, it is in fact not necessary to go into that issue. However, we can not ignore the fact that the amended clause itself says that :

> **" RESOLVED THAT Article 30(a) be and is hereby changed to "Hence forth (now onwards) the tenure of Executive Committee shall be two years from the date of appointment.**

16. It was therefore argued on behalf of defendant that in view of Judgement in **Mathrubhumi Printing and Publishing Co. Ltd. V/s. Vardhaman Publisher Ltd. and others reported in 1992 Company Cases Vol.73 Page 80** it is clear that any alteration made in the Articles of Association would have retrospective effect as if it was there from the inspection of the Articles of Association. However, having regard to the facts and circumstances of the case, it is in fact not necessary to decide at this stage as to whether the above mentioned amendment is retrospective or prospective.

17. In view of above, I do not find any reason to interfere with the discretionary order passed by the Judge, City Civil Court whereby he rejected to grant ad-interim relief in favour of Plaintiff. Hence, there is no substance in this appeal.

Appeal is dismissed with costs.

The Trial Court to expedite the Notice of Motion and dispose off the same in any event by the end of October-2007.

(S.R. SATHE,J.)